

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MANUEL NIEVES,  
Petitioner,

Civ. Act. No. 06-320-GMS

v.  
THOMAS L. CARROLL, WARDEN  
AND CARL C. DANBERG, ATTORNEY GENERAL  
FOR THE STATE OF DELAWARE,  
Respondents.

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U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

PETITIONER'S REPLY TO THE STATE'S ANSWERING BRIEF

PURSUANT TO RULE 2 OF THE GOVERNING SECTION 2254 ACTIONS, 28 U.S.C. 2254, PETITIONER STATE THE FOLLOWING IN RESPONSE TO THE STATE'S ANSWER TO HIS PETITION FOR A WRIT OF HABEAS CORPUS.

1. ARGUENDO, THE CRUX OF THE CASE AGAINST THE PETITIONER SEEMINGLY REST ON THE STATE'S COURT DECISION UNDER SUPERIOR COURT CRIMINAL RULE 32(b)!
2. AS GROUNDS FOR THIS COURT TO DENY CONSIDERATION OF THE PETITIONER'S WRIT, THE STATE RELIES UPON WILMER V. CARROLL, 2003 WL 21146720, \*2 (D. Del.).
3. HOWEVER, WILMER IS IN OPPOSITE OF THE PRESENT CASE FOR THE PURPOSE OF EITHER EQUITABLE OR STATUTORY TOLLING, UNDER § 2244(d)(2).
4. RECENTLY IN LAWRENCE V. FLORIDA, NO. 02-8820, THE UNITED STATES SUPREME COURT GRANTED A CERTIORARI TO RESOLVE A CONFLICT AMONG THE CIRCUITS ON THE QUESTION OF WHETHER AEDPA'S TIME LIMITATION CAN BE

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1. ON OCTOBER 31, 2003, PETITIONER FILED A REDUCTION OF SENTENCE PURSUANT TO RULE 32(a). THE STATE ARGUES THAT IT CANNOT SERVE AS A TOLLING PRINCIPLE UNDER POST-CONVICTION RELIEF.

tolled during the pendency of a petition for certiorari from a judgment denying state post-conviction relief. Implicit and very important in the grant is that the Court may decide whether limitations periods are tollable during the time a prisoner may petition for a certiorari from the denial of his state post-conviction petition EVEN if he has not done so. For this reason alone, this Court must consider the effect that the LAWRENCE decision holds. And in abeyance stay its decision in this case, at this time.

2. The statute of limitations was not intended to prevent a court of review from responding on claims years later or, in the event of a reversal, from retrying a case. See 28 U.S.C. § 2253(c)(3).

6. Similar, in a Third Circuit Court of Appeals case currently pending, the Court is considering the question of whether a motion failing to challenge the conviction or sentence can act to toll the limitation period. See HARTMAN V. CARROLL, No. 04-4000. Again, this Court must stay its decision in this case pending HARTMAN'S outcome.

7. Consideration of Constitutional Rights may not be thwarted by simply recitation of a rule with which there has been compliance in both substance and form, in every real sense. See DAVIS V. WECHSLER, 263 U.S. 22, 24 (1923); Stub v. City of Baxley, 302 U.S. 313, 318-320 (1958).

8. In as much the state agrees. See state's answer, p. \*8 (top paragraph). LAWRIE V. SNYDER, 9 F. Supp. 2d 428, 424 (D. Del. 1998).

### Conclusion

Based upon the above, the petitioner request that as required by the rules of the Court (all trial transcripts including jury instructions and selection). Along with a stay of any decision in light of LAWRENCE and LAWRIE.

### Certificate of Service

I, MANUEL NIEVES, hereby certify that I have served a true

And correct copy(ies) of the attached: \_\_\_\_\_

Reply to the State's Answering Brief upon the following

parties/person (s):

TO: Clerk of the Court  
A. Caleb Boggs Building  
844 King Street  
Locker Box 18  
Wilmington, DE 19811

TO: Elizabeth R. McFarlan  
Deputy Attorney General  
820 N. French Street  
Wilmington, DE 19811

TO: \_\_\_\_\_

TO: \_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 21 day of September, 2006

Manuel Nieves

IM MANUEL NIEVES

SBI# 464723 UNIT F-D-35

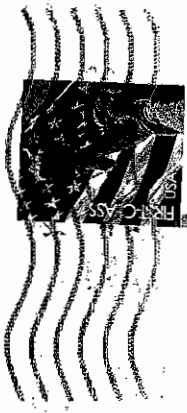
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1181 PADDOCK ROAD

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WILMINGTON DE 197

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